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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,237	03/08/2001	Christopher Keith	050-4011	7700
7590	06/22/2004		EXAMINER	
Brenda Pomerance 260 West 52 St. Apt. 27B New York, NY 10019			GRAHAM, CLEMENT B	
			ART UNIT	PAPER NUMBER
			3628	

DATE MAILED: 06/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/802,237

Applicant(s)

KEITH, CHRISTOPHER

Examiner

Clement B Graham

Art Unit

3628

Nik

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 3628

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-11, are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case, claims 1-11, do not recite any structure or functionality to suggest that a computer performs the recited claims. Thus, claims 1-11, are rejected as being directed to non-statutory subject matter.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-11, are rejected under 35 U.S.C. 102(e) as being anticipated by Hawkins et al (Hereinafter Hawkins US Patent No 6, 029, 146) .

As per claims 1-2, Hawkins discloses a method of facilitating trading, comprising: automatically sending a trial order. ("i. e, order message") to a market.(see column 21 lines 45-65 column 22 line 65 and column 23 line 5 as an interpretive as

Art Unit: 3628

claimed) and automatically receiving a report indicating that the trial order would have been paired if it had been a regular order. (see column 15 lines 55-65).

As per claim 3, Hawkins discloses, wherein the automatically sending and receiving are performed by a trading process. (see column 21 lines 45-65 column 22 line 65 and column 23 line 5 as an interpretive as claimed).

As per claim 4, 8, 10-11, Hawkins discloses a method of facilitating trading, comprising: automatically receiving a trial order, automatically entering the trial order into an order file. ("i. e, order message" see column 21 lines 45-65 column 22 line 65 and column 23 line 5 as an interpretive as claimed) and automatically reporting when the trial order would have been paired had it been a regular order. (see column 15 lines 55-65).

As per claim 5, Hawkins discloses, further comprising selecting the trial order for pairing with an active side order without affecting the pairing priority of other orders in the order file. (see column 15 lines 55-65).

As per claim 6, Hawkins discloses, wherein the automatically reporting includes sending a pairing report for zero shares to a source of the trial order. (see column 15 lines 55-65).

As per claim 7, Hawkins discloses, wherein the pairing report includes the price at which the trial order would have been paired had it been a regular order. (see column 15 lines 55-65).

As per claim 9, Hawkins discloses automatically removing the trial order from the order file after reporting when it would have been paired. (see column 15 lines 55-65).

conclusion

3. The prior art of record and not relied upon is considered pertinent to Applicants disclosure.

Lange (US 6, 321, 212 Patent) teaches financial products having a demand based adjustable return and trading exchange therefor.

Silverman (US Patent 5, 077, 665) teaches distributing matching.

Musmanno(US Patent 4, 346, 442) teaches securities brokerage cash management.

Musmanno(US Patent 4, 376, 978) teaches securities brokerage cash management.

Art Unit: 3628


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B Graham whose telephone number is 703-305-1874. The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantzy Ponvil can be reached on 703-305-9779. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-0040 for regular communications and 703-305-0040 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

CG

June 10, 2004

  
FRANTZY PONVIL  
PRIMARY EXAMINER  
AU 3628